



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY NO. 116 OF 2019

Sahebrao s/o Devrao Potbhare
Age 80 years, Occupation Agriculture,
R/o. Majalgaon, Taluka Majalgaon,
District Beed.

... Applicant
[Orig. Complainant]

Versus

Vishwanathrao s/o Shankarrao Bansode
Age 69 years, Occupation Service,
R/o. Third Floor, Maharashtra State,
Pathyapustak Nirmiti and Abhyaskram
Sanshodhan Mandal, Balbharti, Pune.

... Respondent
[Orig. Accused]

.....

Mr. Sumit S. Kalaskar Advocate h/f Mr. Sudarshan J. Salunke,
Advocate for the Applicant.
Mr. S. V. Dixit, Advocate for Respondent-sole.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.04.2024
Pronounced on : 19.04.2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal of respondent from offence under Section 420 of the Indian Penal Code [IPC] passed by learned JMFC, Majalgaon, District Beed in RCC No. 91 of 2011 dated 13.08.2018, original complainant is intending to challenge the said acquittal by filing appeal and hence instant leave application.

2. Learned counsel for the complainant pointed out that accused assured to fix job for son of complainant i.e. Milind and another relative, namely, Vijay in Navoday Vidyalaya and obtained Rs.3,00,000/-. That, it was specifically impressed upon complainant by respondent accused that he is one of the members of the committee of the said Navoday Vidyalaya. Trusting and believing accused, complainant raised Rs.3,00,000/- and gave it to him. That, accused also assured that if work is not done, he would repay the amount, but job was not fixed/arranged nor amount was returned and therefore, complainant was filed.

3. Learned counsel further submitted that on getting convinced, learned trial court initially issued process, but subsequently, on appreciating evidence, acquitted the accused. According to him, all essential ingredients for attracting offence were made out but still there is acquittal. Further according to him, there is improper appreciation of evidence as well as law and so, there being a good case in appeal, he prays for leave.

4. In answer to above, learned counsel for the accused would submit that complainant utterly failed to establish the case. There was

no assurance of fixing any job. In fact, the Navoday School is run by Central Government, whereas accused was serving in an institution governed by State Government and there is no question of accused being in a position to fix job. There is no evidence about accepting the amount. Learned trial court has thereby correctly disbelieved the evidence on behalf of complainant and committed no error in acquitting the respondent. Hence, he prays to dismiss the application for leave.

5. Heard both sides.

6. Present applicant is now seeking leave to question the judgment and order passed by learned JMFC, Majalgaon in a trial which was conducted for commission of offence punishable under Section 420 of IPC. Complainant's case in trial court is that accused was serving in Balbharti, Pune, where his son Arun also used to pay visits to work as *Vishay Samikshak* (Subject Reviewer) and there, he got acquainted with accused. According to complainant, accused posed himself as one of the members of the committee of Navoday Vidyalaya and assured to fix job in said school. Believing him, complainant requested to arrange job for his son Milind and nephew Vijay. It is case of complainant that accused demanded Rs.1,50,000/- for fixing job of

each candidate and therefore, to get job for Milind and Vijay, Rs.3,00,000/- were paid but both of them did not receive hall ticket for examination and so could not appear for the same. Therefore, money was demanded back but accused refused and hence complaint was lodged for commission of offence under Section 420 of IPC.

7. In support of his case, complainant has examined himself, his son Milind and one Sunil Tukaram Dongre. However, as pointed out by learned counsel for the respondent accused, their cross shows that Navoday Vidyalaya is controlled and run by Central Government, whereas accused was in service in Balbharti, Pune, a State run institution. Both institutions have no nexus or concern with each other. Complainant has admitted that there was written examination and only on getting qualified in the same, there was further process of selection. But complainant's son Milind and other relative Vijay had not at all appeared for examination. In fact, Milind is merely 10th standard passed. Complainant is unable to state as to for which post accused allegedly assured to fix the job. Likewise, even cross of Milind shows that he was not in receipt of hall ticket and he further admits that he had not even filled the necessary form to appear for the examination and he is also unable to state as to whether Vijay had filled and submitted the form. Though complainant has stated that

amount was handed over in presence of several persons, whose names are reflected in the complaint, independent witnesses are not examined.

8. Therefore, from the available evidence, apparently the essential ingredients for attracting Section 420 of IPC are patently missing. Very answers given in cross by complainant and other witnesses have rendered their evidence weak and fragile.

9. Consequently, when there is no element of inducement and dishonestly cheating complainant, learned trial court has committed no error in acquitting accused. No good ground is shown so as to grant leave. Hence, I proceed to pass the following order:

ORDER

1. Leave is refused.
2. Application is rejected.

[ABHAY S. WAGHWASE, J.]